

January 21, 2011

*Via Electronic Filing*  
Julius Genachowski, Chairman  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: *Written Ex Parte: Structure and Practices of the Video Relay Service Program*  
CG Docket No. 10-51

Dear Chairman Genachowski:

This communication is offered in further support of the tiered rate reimbursement methodology that is in place for the provision of video relay services (“VRS”). The record in this proceeding attests that there is a clear consensus among VRS providers and stakeholder organizations for a continuation of the tiered rate structure. The undersigned representatives of CSDVRS, Snap Telecommunications, Inc, Purple Communications, Inc., Convo Communications and AT&T Services, Inc. (collectively the “Providers”) hereby reiterate their endorsement of a tiered-rate structure as previously raised in the record and addressed herein in regard to the rate proceedings.

*The rate structure must advance the functional equivalency mandate.* While VRS has undoubtedly transformed telecommunications for deaf and hard of hearing people, the record is replete with issues showing that significant progress is still needed to attain the ADA’s mandate of functional equivalence, including the need to expand the range of VRS to meet diverse communication needs, resolving the lack of access to or non-interoperable equipment and relay services, refining the provision of video interpreters rather than their random assignment to incoming calls, and establishing effective outreach. Providers agree entirely with relay stakeholder organizations that the ADA’s mandate of functional equivalency must serve as the leading standard for assessing any action considered, proposed, or taken with respect to VRS.

The record reflects that relay providers and stakeholder organizations have called on the Commission to maintain the tiered rate as the most balanced approach which enables forward progress in VRS and related products in accomplishing functional equivalency objectives and at the same time preserves a sustainable TRS Fund and equitable compensation for services.<sup>1</sup> There is no question that the current tiered rate structure has been a tremendous success story, enabling competitive VRS providers to accomplish, among other things, shorter hold times, clearer video displays and connections, higher quality video interpreting, the establishment of a ten-digit numbering system, automatic 9-1-1 services, new video hardware and software, video mail, expanded video technology installations in businesses, workplaces and public places, and enhanced features for video dialing and connections. At this critical juncture in an evolving and maturing VRS, we continue to hold our consensus view that the tiered rate is a proven methodology for sustaining progress and that now is not the time for the Commission to imperil such progress by experimenting with new untested VRS market approaches.<sup>2</sup>

*The tiered rate is based on compelling economic rationale.* As addressed in these proceedings, the tiered rate offers an equitable and reasonable means of reimbursement to VRS providers. As is the standard in any industry, larger companies can better utilize their abundant

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<sup>1</sup> See, e.g., *In the Matter of Structure and Practices of the Video Relay Service Program*, Comments of Sprint Nextel, CG Docket 10-51 (August 18, 2010); *In the Matter of Structure and Practices of the Video Relay Service Program*, Purple Communications, Inc. Comments of Notice of Inquiry, CG Docket 10-51 (August 18, 2010); *In the Matter of Structure and Practices of the Video Relay Service Program*, Comments of AT&T, Inc., CG Docket 10-51 (August 18, 2010); *In the Matter of Structure and Practices of the Video Relay Service Program*, Telecommunications for the Deaf and Hard of Hearing, Association of Late-Deafened Adults, Inc., National Association for the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, American Association of the Deaf-Blind, Comments in Response to Notice of Inquiry, CG Docket 10-51 (August 18, 2010).

<sup>2</sup> See, Jonathan B. Baker and Paul de Sa, *The Year in Economics at the FCC: A National Plan for Broadband* (Oct. 13, 2010) (“*The Year in Economics*”), available at <http://www.fcc.gov/osp/projects/baker-desa-RIO.pdf>, wherein Commission members cited that, “[a] regulator, like a firm that makes an investment decision under uncertainty, obtains an option value from delaying its decision. Waiting until uncertainty about the world is clarified avoids the possibility of locking-in what could turn out to be a suboptimal regulatory strategy, and thus avoids inducing firms to make sunk investments conditional on that strategy.”

resources to minimize their costs and thereby increase their profits; the VRS industry is no different. The Commission unanimously adopted rate tiers which were carefully calibrated to match the higher costs of smaller and emerging providers who do not have the scale economies and efficiencies of larger providers, thereby avoiding the overcompensation of the dominant provider while enabling greater competition and choice. The multi-tiered rate was designed and implemented in 2007 to account for the fact that costs decrease as volume increases. This tiered model prevents over-reimbursement to larger providers that are better able to realize an economy of scale, and at the same time allows smaller providers with lower minute volumes to remain in the market providing consumers choice and providing the industry with pressure for innovation. The docket has ample evidence supporting the sliding economy of scale.<sup>3</sup>

*The tiered rate fosters competition, growth, and development.* Of paramount importance to any healthy industry is competition. In the VRS industry, the tiered reimbursement methodology has allowed a healthy and robust form of competition which has enabled smaller and emerging providers to invest in services and products in response to consumer demand for functionally equivalent VRS. A tiered structure has permitted smaller entities to get a foot hold in the VRS market, grow, and subsequently innovate new and improved products. As a result, the program has come closer to achieving functional equivalency, as mandated by Section 225 of the Communications Act.<sup>4</sup> An abandonment of the tiered rate at this juncture will not only repress new entrants to the marketplace, but also will serve to eventually eliminate all providers that have not achieved the same economies of scale as the dominant provider.

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<sup>3</sup> See, e.g., CSDVRS Notice of Ex Parte, CG Docket 10-51 (December 13, 2010) CSDVRS provided the Commission with a graphic representation of the sliding economy of scale in its December 13, 2010 ex parte presentation.

<sup>4</sup> 47 U.S.C. §225

*The tiered rate structure allows for predictable funding.* The Commission has itself lent considerable credence to the value of predictability in calculating income and costs for VRS providers. For this reason, the tiered rate was implemented on a multi-year basis to allow providers a reasonable and predictable means of forecasting their financials. Currently the industry is operating under an interim one-year tiered rate structure while the Commission examines the totality of the fiscal components affecting VRS. The undersigned Providers take no issue with this interim period, but again stress that it is important for the Commission to implement a multi-year reimbursement schedule during the next rate proceeding. A predictable rate allows providers to plan on undertaking measures to better realize the functional equivalency mandate such as research and development, new hiring, and outreach. Barring a multi-year rate, providers will operate in an environment of uncertainty, not knowing whether the funding will exist in subsequent years to bring a new product to market, open a new call center, or educate the public on the availability and utility of VRS. This type of uncertainty is unsustainable when running a business, and inconsistent with the realities of investor expectations. Ultimately, such uncertainty operates to the direct detriment of consumers in an exacting contradiction to the functional equivalency mandate.

*Abandoning tiers in favor of a reverse auction or bidding structure will obviate consumer choice and stifle innovation.* Stakeholder groups including Telecommunications for the Deaf and Hard of Hearing, Association of Late-Deafened Adults, Inc., National Association for the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, and the American Association of the Deaf-Blind have expressed support for the tiered rate as critical to sustaining consumer choice and innovations to service and products to their benefit.<sup>5</sup> It is important to note that the

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<sup>5</sup> *In the Matter of Structure and Practices of the Video Relay Service Program*, Telecommunications for the Deaf and Hard of Hearing, Association of Late-Deafened Adults, Inc., National Association for the Deaf, Deaf and Hard

only provider on record in support of the elimination of tiers in favor of a bid or auction scheme with no specific allocation of market share is the dominant provider.<sup>6</sup> As alluded to in the record, the undersigned Providers believe a bid or auction will only serve to eliminate all players except the dominant provider from the VRS marketplace, either in the initial phases or through a gradual ‘squeeze’ from the industry. Competing providers simply will not be able to operate in a sustainable manner when put up against the dominant provider’s massive economies of scale (assuming they were able to secure a winning bid to begin with). This will ultimately only serve to finally and firmly entrench the dominant provider as an absolute monopoly, entirely eliminate consumer choice in providers, and act as a disincentive to further development and innovation in the industry – all in direct contradiction to the mandates specified in Section 225 of the Act and attendant provisions of the Code of Federal Regulations.

Furthermore, any auction type approach would inevitably create losing bidders who would inequitably lose millions of dollars of capital that was invested in growing their VRS business and creating new products for consumers without any possibility of recovery. It would also be prudent for the Commission to take a close look at the effects of competitive bidding in state TRS programs before attempting to formulate and propose such an approach to VRS.

It is worth noting that the innovations in the telecommunications industry were made possible by the vigorous competition and broad array of choices that hearing people enjoy in the marketplace. The birth of the internet, cellular phones, fiber optics, and wireless broadband are all directly related to the competitive environment created by regulators.<sup>7</sup> Healthy competition

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of Hearing Consumer Advocacy Network, American Association of the Deaf-Blind, Comments in Response to Notice of Inquiry, CG Docket 10-51 (August 18, 2010).

<sup>6</sup> See, *In the Matter of Structure and Practices of the Video Relay Service Program*, Comments of Sorenson Communications, CG Docket 10-51 (August 18, 2010)

<sup>7</sup> See *The Year in Economics* (“Uncertainty about the scope of a natural monopoly creates a number of problems for a regulatory agency. The most obvious problems involve the difficulties of applying an error cost framework from

spurs innovation and efficiencies, and the promotion of such is at the very heart of Section 225 of the Act and attendant regulations. To that end, the Commission is charged with the responsibility to implement both the language and the spirit of the law, and to foster the advancement of functional equivalency.

The undersigned Providers believe great strides have been made in VRS in the past three years specifically because of the multi-year tiered rate. It has allowed for the establishment and growth of healthy competition, fantastic technological innovation, and an overall vast improvement in the lives of deaf, hard-of-hearing, and deaf-blind people. To eliminate a proven reimbursement structure in favor of an untested method [in the specific industry] with potentially devastating effects on smaller providers and consumers, would only serve to undo the advances of the past several years and the growth of the life-changing service of VRS throughout the community. While absolute functional equivalence may not yet be fully realized, the undersigned Providers believe that this hallmark cannot be reached except by maintaining the proven tiered multi-year rate reimbursement methodology. Indeed, altering course at this time will only serve to undo the great progress made in VRS and relegate relay consumers to less than their civil right to accessible telecommunications.

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decision theory when the probabilities and social benefits or costs of a range of possible outcomes are hard to assess. In modern times, the FCC, spurred by Congress, has generally made the necessary tradeoffs by choosing policies that aim to encourage competition.”)

Respectfully Submitted,

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